

Offices

Administrative Office

303 N. Main Street
Suite 600
Rockford, IL 61101

Bloomington

316 W. Washington Street
Bloomington, IL 61701

Fox Valley

1024 W. Main Street
St. Charles, IL 60174

Galesburg

1614 E. Knox Street
Galesburg, IL 61401

Kankakee

191 S. Chicago Avenue
Kankakee, IL 60901

Ottawa

1021 Clinton Street
Ottawa, IL 61350

Peoria

331 Fulton Street
Suite 600
Peoria, IL 61602

Rock Island

1705 Second Avenue
Suite 314
Rock Island, IL 61201

Rockford

303 N. Main Street
Suite 600
Rockford, IL 61101

Waukegan

325 W. Washington Street
Suite 100
Waukegan, IL 60085

Wheaton

400 West Roosevelt Road
First Floor
Wheaton, IL 60187

Will County

5 West Jefferson Street
Lower Level
Joliet, Illinois 60432

Woodstock

400 Russel Court
Woodstock, IL 60098

Website

www.pslegal.org



PRAIRIE STATE LEGAL SERVICES

Equal Access to Justice

1024 WEST MAIN STREET
ST. CHARLES, IL 60174
PHONE: 630-232-9415
TOLL FREE: 800-942-4612
FAX: 630-232-9402

RECEIVED

KATHRYN MCGOWAN BETTCHER, Managing Attorney

ANNETTE M. VOSS

ANNE C. DUNBAR

AMBER S. MOORE

DENISE BEZICK HUME

SARAH MEGAN, Director of Litigation

CHARLENE RIEFLER

BRANDY STUBBS

KATHLEEN L. FINN

2012 MAY 30 P 1:00

AGIC 840

May 25, 2012

Supreme Court Mortgage Foreclosure Committee
c/o Administrative Office of the Illinois Courts
3101 Old Jacksonville Road
Springfield, IL 62704

Re: Proposed Recommendations for Improving the Loss Mitigation Process for
Mortgage Foreclosure Proceedings in Illinois

Dear Members of the Mortgage Foreclosure Committee:

Prairie State Legal Services, Inc. represents low-income and elderly clients in 36 counties in northern and central Illinois. We submit the comments below in consideration of the thousands of homeowners in our service area who are facing mortgage foreclosure. We appreciate the Supreme Court's appointment of this Committee to examine current practices and the Committee's work to develop improved foreclosure procedures.

Since the onset of the foreclosure crisis, thousands of low income homeowners have sought assistance from our legal aid program, but due to inadequate resources we have been able to assist only a small percentage. The reality is that few homeowners in the flood of foreclosures have legal representation. We have attempted to fill some of the gap with information services, for example, by initiating a mortgage foreclosure Help Desk in Kane County. We are also working in Kane County with the Circuit Court and a committee including representatives of the mortgage foreclosure plaintiff's bar, to develop a mortgage foreclosure mediation program. Based on our representation of homeowners, we are familiar with the challenges they and we, as their representatives, face.

Given the unique confluence of the high volume of foreclosure cases, the high volume of unrepresented homeowners, and the known abuses of the lenders and servicers, special measures are required to help address persistent problems and avoid unnecessary foreclosures that inflict lasting damage on households and communities and burden the courts. For these reasons, we strongly endorse the loss mitigation and mediation recommendations made by the Committee.



Our primary focus in these comments concerns foreclosure mediation. We want to underscore that we support mandatory foreclosure mediation programs for residential foreclosures. Mandatory mediation is the best way, if not the only way, to promote an actual meaningful evaluation of loss mitigation alternatives. In attempting to assist our clients in the loss mitigation process, we continue to experience repeated requests for documents already submitted, excessive and/or unnecessary documentation demands, inability to communicate in timely ways with the servicer (including with the designated single point of contact), lack of information about the potential options the servicer will consider, lack of information about the status of loss mitigation requests, lack of notice about loan modification denials, lack of information about reasons for denials as well as flat out wrong reasons for denials (e.g., “you failed to give us documents we requested” when the borrower submitted requested documents repeatedly).

Despite the nationwide settlement and multiple directives from the federal government, these exasperating difficulties in dealing with loan servicers persist. Given our own experience with servicers, we know how bewildering and defeating the experience is for unrepresented homeowners. Meanwhile, their foreclosure cases proceed on the “dual track” in our courts.

Irrespective of some of the specific details of foreclosure mediation programs, as a general matter, we view mandatory mediation for residential foreclosures as the only reliable mechanism to bring the parties together to examine feasible loss mitigation options with some accountability to or scrutiny by a third party. We urge the Committee to recommend that the Illinois Supreme Court adopt a rule requiring circuit courts to develop mandatory foreclosure mediation programs in conformance with general guiding principles. We suggest that the programs be funded by reasonable filing fee add-ons.

With respect to the specific mediation-related questions posed by the Committee’s Notice, we submit the following:

Mediation

(1) Outreach

We agree that outreach is important. Homeowners receive a dizzying number of mail and phone solicitations and it is hard for them to differentiate between useful information and unreliable information or

outright scams. Enlisting trusted community members in well designed publicity campaigns may help. We suggest that mediation programs be designed to include to the extent feasible effective methods appropriate to local conditions to reach out to homeowners.

(2) Mandatory or Opt-In.

Outcomes from mediation programs around the country show that mandatory mediation programs have better participation and effectiveness than opt in programs. Most “mandatory” programs are not truly mandatory, but allow homeowners to opt out if they are not interested in mediation. We support this approach, where cases proceed automatically to the mediation track unless the homeowners opt out.

(3) Housing Counseling

Properly trained housing counselors are invaluable in helping homeowners identify realistic options and pursue appropriate loss mitigation solutions. A Congressionally mandated study by the Urban Institute reported that homeowners who received housing counseling were 1.7 times more likely to avoid foreclosure than those who did not. Loan modifications obtained through housing counseling agencies were more affordable for homeowners and showed a 45 percent higher probability of avoiding re-default. Unfortunately, HUD approved housing counseling agencies are not widely available in some parts of the State. Mediation programs should be designed to encourage maximum use of HUD approved housing counseling agencies which offer free services to homeowners.

(4) Legal Aid

We strongly support the goal stated in the recommendation that at a minimum legal aid should be provided prior to any mediation or court hearing to help the homeowner appear/answer/otherwise respond to avoid default and to evaluate for potential claims and defenses. How to achieve this goal is challenging, as resources vary throughout the State. This issue involves a frank evaluation of the resources available in specific jurisdictions. We suggest that as a guiding principle, mediation programs be designed to integrate the pro bono participation of attorneys, law students and recent law graduates to the maximum extent feasible to assist homeowners in avoiding default and understanding their rights in the foreclosure process.

(5) Pre-Mediation Process

We agree that there should be a monitored pre-mediation process, so loss mitigation does not become mired in the documentation and other issues we routinely encounter as described above. We suggest that guiding principles for mediation programs include specific documents that homeowners and servicers must provide in the pre-mediation process in order to make mediation effective. We also suggest that the pre-mediation process document exchange process be supervised in some way. The proposed mediation model in Kane County includes a court-employed program coordinator to administer the mediation program and to monitor the parties' progress in submitting the required documentation. The coordinator will receive the submissions and determine the parties' readiness for mediation. The coordinator may report to the court a party's failure to participate in the process in good faith. We suggest that as a guiding principle that mediation programs include this function in some manner, to move the cases forward efficiently in the mediation track and to keep them from bogging down in continual documentation demands.

We recommend that foreclosure proceedings be stayed while cases proceed in the mediation track, and that proposed rules for mediation programs make this stay explicit.

We strongly agree that a lender representative with authority to settle must be present at the actual mediation sessions, whether by teleconference or in person. Otherwise mediation will be ineffective and will become just another delay event in unproductive loss mitigation.

We suggest that mediation programs be designed to minimize court appearances. Multiple court appearances drain judicial resources and are costly to the parties (ultimately, the homeowner, who typically bears the cost of plaintiff's attorneys fees).

(6) Trained Mediators

We agree that mediators must be trained in the foreclosure process and in the potential loss mitigation options available to homeowners. The range of modification policies is not easy to absorb, and we believe it requires legal training or its equivalent. It is challenging to generate a sufficient supply of foreclosure mediators. We have come to the conclusion that mediation programs must compensate mediators in order to generate a sufficient supply of trained mediators. This seems especially true in

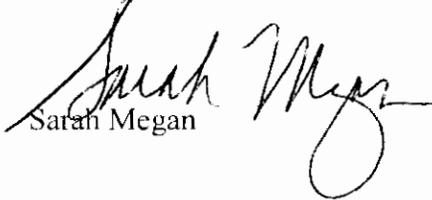
counties with a high volume of foreclosures. The filing fee add-on to support the mediation program must be sufficient to fund this cost.

Loss Mitigation Comments:

As described above, ineffective communication between homeowners and servicers is a major issue increasing the numbers of unnecessary foreclosures. We support the loss mitigation ideas set forth by the Committee, including an affidavit similar to the Connecticut affidavit, as methods to increase effective communication between the parties to obtain timely and genuine review of the homeowner's circumstances before a foreclosure case is filed. These requirements will benefit of families and communities, as well as reduce the volume of unnecessary foreclosure pressing on judicial resources.

Thank you for your consideration of these comments. I would also be happy to provide comment at the public hearing schedule for June 8th.

Sincerely,


Sarah Megan